

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2015-013746

08/02/2017

HON. TERESA SANDERS

CLERK OF THE COURT
B. Randhawa
Deputy

JOSEPH MOMOT, et al.

KRYSTLE DELGADO

v.

SILKWORTH MANOR L L C, et al.

ADAM E HAUF
MICHAEL E GOLDENBERG
JOHN MULLIGAN
5701 E CACTUS RD
SCOTTSDALE AZ 85254

MINUTE ENTRY

The Court has read and considered Plaintiff's *Emergency Application for Order to Show Cause Why Defendant Silkworth Manor LLC Should Not Be Held in Contempt* filed July 7, 2017, the Defendant's response, and the Plaintiff's reply.

The Plaintiff's application is based upon the Minute Entry dated May 8, 2017 issued by Judge Lori Horn Bustamante. At issue before Judge Bustamante was the Defendant's *Motion to Stay and Waive Supersedeas Bond* pending an appeal of a judgment entered in favor of the Plaintiff and against the Defendant. Judge Bustamante denied the motion and issued the following orders:

"IT IS ORDERED denying Defendant John Mulligan's Motion to Stay Enforcement of the Judgment Pending the Appeal."

"IT IS FURTHER ORDERED denying the Motion to Waive the Supersedeas Bond."

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“IT IS FURTHER ORDERED setting the amount of the supersedeas bond at \$28,026.80.”

The Defendant thereafter failed to post the supersedeas bond, and the Plaintiff’s application was filed on July 7, 2017. A hearing was held with regard to the application on July 19, 2017 before this Court. This Court ordered that the bond be posted no later than 5:00 p.m. on July 26, 2017, or the stay would be lifted. It does not appear that any bond has been posted, although the appellate process continues in CA-CV 17-0274 before Division One of the Arizona Court of Appeals with regard to Defendant Silkworth Manor. Defendant John Mulligan has been dismissed as a party to the appeal.

With regard to the request that the Defendant be held in contempt, the Court notes the following:

- (1) Rule 6(a) of the Arizona Rules of Civil Appellate Procedure provides that an appellant “may obtain a stay of execution of judgment by filing a supersedeas bond in the trial court.”
- (2) Judge Bustamante’s order dated May 8, 2017 does not order the Defendant to post the bond, or to post it by a particular date.
- (3) In order to hold a party in civil contempt, the Court must find that the party (a) had knowledge of a lawful court order, (b) had the ability to do so, and (c) failed to comply.

Based upon the matters presented, the Court finds that holding the Defendant in contempt for failure to post the supersedeas bond is not appropriate. The bond was set in order for the Defendant to obtain a stay of enforcement of the judgment. The Defendant was not specifically ordered to post the bond, but it was required to be posted as a condition of the stay.

The remedy for the Defendant’s failure to post the bond is for the Court to order that the stay of enforcement of the judgment be rescinded.

IT IS THEREFORE ORDERED denying the Plaintiff’s *Emergency Application for Order to Show Cause Why Defendant Silkworth Manor LLC Should Not Be Held in Contempt*.

IT IS FURTHER ORDERED rescinding the Court’s Minute Entry order dated May 8, 2017, which resulted in a stay of enforcement of the judgment pending the appeal.